Supreme Court, U. S.
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APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1455

UNITED STATES OF AMERICA,

Petitioner,

—*v.*—

EDGAR H. GILLOCK

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED MARCH 19, 1979
CERTIORARI GRANTED MAY 14, 1979

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1455

UNITED STATES OF AMERICA,

Petitioner,

—*v.*—

EDGAR H. GILLOCK

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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* A copy of the opinion of the United States Court of Appeals for the Sixth Circuit was reproduced as Appendix A to the petition for a writ of certiorari (pp. 1a-51a). An earlier opinion of the court of appeals, remanding for a more definite finding, was reproduced as Appendix D to the petition (pp. 56a-58a). The September 28, 1977, and December 3, 1976, orders of the United States District Court for the Western District of Tennessee, granting respondent's motion to suppress, were reproduced as Appendices E and F to the petition (pp. 59a-64a and 65a-74a, respectively).

DOCKET ENTRIES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

Cr. No. 76-104

UNITED STATES

v.

EDGAR H. GILLOCK

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8-12-76	1	Indictment
8-18-76	3	Order on Arraingment [sic]; plea of NOT GUILTY.
8-30-76	5	Motion to Dismiss for failure to State an Offense.
8-30-76	6	Memorandum in Support of Motion to Dismiss for failure to State an offense.
8-30-76	13 13a	Motion and Memorandum in Support of Motion to Dismiss and/or suppress pursuant to defendants privilege under the speeck [sic] and debate clause of the Tennessee constitution.
10-5-76	25	Memorandum Decision and order on Motion to Dismiss Indictment—Motion to DISMISS Count II is *granted* and the motion to dismiss the other counts is *denied*; defendant is allowed to withdraw his motion for a bill of particulars and to file a new motion within ten days.
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

8-12-76

CR. NO. 76-104
18 USC, § 1951
18 USC, § 1952
18 USC, § 1962
18 USC, § 2

UNITED STATES OF AMERICA

v.

EDGAR H. GILLOCK

INDICTMENT

[Filed Aug. 12, 1976]

THE GRAND JURY CHARGES:

COUNT ONE

From on or about the 1st day of January 1975 up to and including the 25th day of March 1975, in the Western District of Tennessee and in the Middle District of Tennessee, EDGAR H. GILLOCK unlawfully attempted, being procured, induced, counseled, aided and abetted by John Hundley, an attorney not named herein as a defendant, under color of official right, as an elected member of the Tennessee General Assembly holding the position of Senator representing the 28th Senate District in Shelby County, Tennessee, to obtain money from Ruth Howard in furtherance of a plan and purpose to obstruct, delay and affect commerce by preventing the transportation of James Michael Williams from the State of Tennessee to the State of Illinois, in violation of Title

18, United States Code, § 1951 and Title 18, United States Code, § 2.

(nm $10,000., or nm 20 yrs., or both)

COUNT TWO

From on or about the 1st day of January 1975 up to and including the 25th day of March 1975, in the Western District of Tennessee and the Middle District of Tennessee, EDGAR H. GILLOCK unlawfully used, being procured, induced, counseled, aided, and abetted by John Hundley, an attorney not named herein as a defendant, a facility in interstate commerce, to wit, the telephone and the mails and did cause Ruth Howard to travel in interstate commerce between the State of Missouri, and the State of Tennessee in an attempt to distribute the proceeds of a bribe which EDGAR H. GILLOCK agreed to accept in violation of Tennessee Code Annotated, § 39-802 for agreeing to exercise influence under color of his office as an elected member of the Tennessee General Assembly holding the position of Senator representing the 28th Senate District of Shelby County, Tennessee, in order to intercede taking advantage of deference accorded him and prerogatives available to him by virtue of his elected public office in such a way to prevent the extradition of James Michael Williams from the State of Tennessee to the State of Illinois, in violation of Title 18, United States Code, § 1952 and Title 18, United States Code, § 2.

(nm $10,000., or nm 5 yrs., or both)

COUNT THREE

From on or about the 1st day of February 1972 up to and including the 7th day of April 1972, in the Western District of Tennessee and the Middle District of Tennessee, EDGAR H. GILLOCK unlawfully attempted under color of official right as an elected member of the Tennessee General Assembly holding the position of Senator representing the 28th Senate District in Shelby County, Tennessee to obtain approximately Five Thou-

sand ($5,000.00) Dollars from Donald W. Bumpas in furtherance of a plan and purpose affecting commerce, to wit, to use the prerogatives of his elected public office in an offer to guarantee a means by which said Donald W. Bumpas could obtain a license as a master electrician usable by him in Shelby County, Tennessee, in violation of Title 18, United States Code, § 1951.

(nm $10,000., or nm 20 yrs., or both)

COUNT FOUR

From on or about the 1st day of February 1972 up to and including the 7th day of April 1972, in the Western District of Tennessee and the Middle District of Tennessee, EDGAR H. GILLOCK unlawfully attempted under color of official right as an elected member of the Tennessee General Assembly holding the position of Senator representing the 28th Senate District in Shelby County, Tennessee to obtain approximately Five Thousand ($5,000.00) Dollars from Sammy Robbins in furtherance of a plan and purpose affecting commerce, to wit, to use the prerogatives of his elected public office in an offer to guarantee a means by which said Sammy Robbins could obtain a license as a master electrician usable by him in Shelby County, Tennessee, in violation of Title 18, United States Code, § 1951.

(nm $10,000., or nm 20 yrs., or both)

COUNT FIVE

From on or about the 1st day of February 1972 up to and including the 7th day of April 1972, in the Western District of Tennessee and the Middle District of Tennessee, EDGAR H. GILLOCK unlawfully attempted under color of official right as an elected member of the Tennessee General Assembly holding the position of Senator representing the 28th Senate District in Shelby County, Tennessee to obtain approximately Five Thousand ($5,000.00) Dollars from Bobby Davis in further-

ance of a plan and purpose affecting commerce, to wit, to use the prerogatives of his elected public office in an offer to guarantee a means by which said Bobby Davis could obtain a license as a master electrician usable by him in Shelby County, Tennessee, in violation of Title 18, United States Code, § 1951.

(nm $10,000., or nm 20 yrs., or both)

COUNT SIX

From on or about the 1st day of February 1972 up to and including the 7th day of April 1972, in the Western District of Tennessee and the Middle District of Tennessee, EDGAR H. GILLOCK unlawfully attempted under color of official right as an elected member of the Tennessee General Assembly holding the position of Senator representing the 28th Senate District in Shelby County, Tennessee to obtain approximately Five Thousand ($5,000.00) Dollars from Gary Davis in furtherance of a plan and purpose affecting commerce, to wit, to use the prerogatives of his elected public office in an offer to guarantee a means by which said Gary Davis could obtain a license as a master electrician usable by him in Shelby County, Tennessee, in violation of Title 18, United States Code, § 1951.

(nm $10,000., or nm 20 yrs., or both)

COUNT SEVEN

From on or about the 1st day of February 1972 up to and including the 7th day of April 1972 and from on or about the 1st day of January 1975 up to and including the 25th day of March 1975, in the Western District of Tennessee and the Middle District of Tennessee, EDGAR H. GILLOCK, being employed and associated with an enterprise, to wit, being an elected member of the Tennessee General Assembly as a Senator representing the 28th Senate District in Shelby County, Tennessee, the activities of which affect interstate and foreign commerce, unlawfully did participate, directly and indirectly, in the conduct of the affairs of said Tennessee General Assembly through a pattern of racketeering activity, as more fully described in any two or more of Counts One through Six of this Indictment, said acts each being violations of Tennessee Code Annotated, § 39-802 prohibiting said EDGAR H. GILLOCK from agreeing to accept anything of value in return for a promise or agreement to exercise his influence, judgment and prerogatives accorded him under color of office, in violation of Title 18, United States Code, § 1962.

(nm $25,000., or nm 20 yrs., or both)

A TRUE BILL:

_____

Foreman

DATED: August 12, 1976

_____

United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

CRIMINAL CR 76-104

UNITED STATES OF AMERICA

v.

EDGAR H. GILLOCK

MEMORANDUM DECISION AND ORDER ON
MOTION TO DISMISS INDICTMENT

[Filed Oct. 5, 1976]

This cause is before the court on motion to dismiss the indictment, memorandum briefs and extensive argument.

Since, as will be seen, the court concludes that Count II must be dismissed, we will deal with that count first. As also will be seen, the court has serious doubt as to whether the other counts state a federal crime, but we will not dismiss them at this time.

COUNT II

As to Count II, defendant contends, firstly, that it does not allege a crime under 18 USCA § 1952 (Travel Act) and § 2 (aiding and abetting statute), upon which it is based, because the conduct alleged does not, as it must, constitute a violation of TCA § 39-802, a Tennessee bribery statute. It does not constitute a violation of § 39-802, defendant contends, because under the law of Tennessee a matter of extradition could not come before the defendant ". . . in his official capacity . . ." and that such is necessary for a violation of TCA § 39-802. The Government concedes, as the Travel Act plainly provides, that it is necessary that the conduct alleged amount to a crime under TCA § 39-802. The Government further

concedes that a matter of extradition could not officially come before defendant as a state senator; the Government contends, however, that such is not necessary to a violation of TCA § 39-802. Thus the argument here turns on an interpretation of § 39-802.

We agree with the defendant that § 39-802 covers only matters coming before a legislator in his official capacity. Otherwise, it would cover any situation in which a legislator received a thing of value under an understanding that his ". . . opinion or judgment is to be given in [a] particular manner . . ." on any subject whatsoever and under any circumstances. The Government argues that this is, indeed, the proper interpretation to place on this statute. We cannot place this interpretation on the statute, however, because such an interpretation would lead to some ridiculous results that are easy to imagine and because of the universally accepted principle that criminal statutes are to be narrowly construed in favor of leniency.

Defendant, with respect to Count II, makes the additional contention that it does not allege, as the Travel Act requires, (1) that *when* the defendant used the telephone and mails as facilities in interstate commerce, he did so with intent to distribute the proceeds of an unlawful activity and (2) that *thereafter* defendant attempted to distribute the proceeds of an unlawful activity. The Government concedes that the Travel Act requires proof of both of such facts (*United States* v. *Prince*, 529 F.2d 1108 (6th Cir. 1976)) and simply argues that both are sufficiently alleged in the indictment. We agree with the defendant that such facts are not sufficiently alleged and therefore Count II must be dismissed for these additional reasons.*

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* The Government at argument indicated that it does not rely on, as a separate basis of federal jurisdiction, the causing of Ruth Howard to travel in interstate commerce. Rather, the Government's position is that this allegation was made in connection with the "thereafter" requirement and should be construed to mean that the travel by Howard occurred *after* the use of the mail and telephone as facilities in interstate commerce. As indicated above, we do not believe the indictment is fairly subject to such construction.

COUNT I AND COUNTS III THROUGH VI

These counts are based on the Hobbs Act, 18 USCA § 1951. Under the Hobbs Act, there are two ways of charging an interstate commerce nexus. The first way of charging the nexus is that, by robbery or extortion (or an attempt at such), the defendant affected commerce or attempted or conspired to affect commerce. In *United States* v. *Staszuck*, 517 F.2d 53 (7th Cir. 1975), it was held that, under such an indictment allegation, the proof was sufficient if it was shown that an extortion had a realistic probability of affecting interstate commerce, although it had no actual effect on such commerce. Alternatively, under the Hobbs Act, it may be charged that the defendant committed or threatened physical violence in furtherance of a plan or purpose to do anything in violation of the Act. In *United States* v. *Franks*, 511 F.2d 25 (6th Cir. 1975), it was held that, under such a charge, it must be shown that the defendant attempted or committed physical violence in furtherance of a plan or purpose to affect commerce by robbery or extortion.

In Count I and Counts III through VI, the indictment does not follow either of these alternatives. It charges attempted extortion as such is defined under § 1951;* physical violence is not charged. So it really charges attempted extortion in furtherance of a plan or purpose to affect commerce (by attempted extortion).

At argument, counsel for defendant seemed to concede that, under the authorities, such an indictment allegation will pass muster, and this court believes that it probably will. We say this because we believe that an allegation (as is alleged) that the defendant attempted extortion in furtherance of a plan or purpose to affect commerce is equivalent to an allegation that the defendant attempted extortion in an attempt to affect commerce, thus bringing the allegation under the first alternative discussed above.

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* "Extortion" is there defined to include the obtaining of property from another, with his consent, under color of official right, and therefore includes the receipt (or the attempted receipt) of a bribe by a public official.

The principal problem with these Hobbs Act counts is created by a very recent decision by our Court of Appeals. *United States* v. *Yokely*, —— F.2d —— (6th Cir., No. 76-1135, decided September 13, 1976). In that case the defendant was indicted under the Hobbs Act by a federal grand jury for armed robbery of a K-Mart Store in the Detroit area. The district judge dismissed on the ground that the Hobbs Act covered only illegal labor activities. While the Court of Appeals disagreed to the extent that it held that the Hobbs Act covered other than labor activities, it affirmed on the ground that the Hobbs Act is confined to "racketeering activities," whether labor or non-labor. Thus the Court of Appeals determined that an armed robbery that quite clearly affected interstate commerce (because of the source of supply of the K-Mart), and therefore was covered by the literal wording of the Hobbs Act, was not covered by the Act because, in the light of its legislative history, the Act was aimed at "racketeering activities." The armed robbery involved, the court held, was not such activity.

The problem in applying this *Yokely* decision to the instant case is, as was quite frankly pointed out by defense counsel at argument, the opinion does not define "racketeering activity." Certainly the activity of the defendant charged in the instant indictment (as a state senator, the attempt in 1975 to collect a bribe to prevent an extradition and the attempt in 1972 to collect bribes to aid certain persons to obtain an electrician's license) would not ordinarily be thought of as "racketeering." However, there are many cases in the books, of which the *Staszcuk* case, *supra*, is one, which have applied the Hobbs Act in situations similar to that alleged in this indictment.

We understand the Government is seeking an *en banc* hearing in the *Yokely* case, and, it would seem, will seek review by the Supreme Court if the *Yokely* decision stands. This being so, the court points out that it might be good judicial administration, if the parties could so agree, to defer trial of this case to await further developments in the *Yokely* case.

COUNT VII

Count VII is based on 18 USCA § 1962. While the Government's memorandum quotes and relies on § 1962 (b), it is obvious from the context of Count VII that the Government actually relies on § 1962(c), for, clearly, Count VII does not charge a crime under § 1962(b). This is so because there is no allegation that the defendant, through a pattern of racketeering activity, acquired or maintained an interest in or control of the state legislature, as is required by § 1962(b). The allegation in Count VII is that the defendant, through such activity, participated in the conduct of the affairs of the legislature, which satisfies the requirement, in this respect, of § 1962(c).

As has been seen, § 1962(c) requires, as is alleged, that the defendant have participated in the conduct of the affairs of the legislature through a "pattern of racketeering activity." Sec. 1961(1) defines "racketeering activity" to include the offense of bribery under state law and to include violations of § 1951 (Hobbs Act) or § 1952 (Travel Act); and § 1961(5) defines "pattern of racketeering activity" to mean at least two acts of racketeering activity. To meet this requirement of § 1962 (c), the Government relies on the allegations of violations of the Hobbs Act and Travel Act in Counts I through VI as constituting at least two acts of racketeering activity and alternatively relies on the allegation of bribery in such counts as being violations of TCA § 39-802 as constituting at least two acts of racketeering activity.

We have already held that Count II does not charge a violation of the Travel Act, and we have indicated that we have serious doubt whether Count I and Counts III through VI allege a violation of the Hobbs Act. With respect to the alleged violations of TCA § 39-802, we have already held that no such violation is alleged in Count II. The same ruling would apply to Count I since it also charges the same attempt to collect money to

prevent an extradition.* With respect to Counts III through VI, it cannot be ascertained whether the matter that was the subject of the alleged bribe (i.e. to obtain an electrician's license) would come before the defendant in his official capacity as a state senator and therefore be a violation of TCA § 39-802. It would appear that this should be covered by a bill of particulars hereinafter discussed.

Since we are not dismissing the Hobbs Act counts, Count I and Counts III through VI, we are of the opinion that Count VII should not be dismissed. If, however, these counts are ultimately dismissed and if it should appear (after the filing of a bill of particulars) that Counts III through VI do not state a bribery offense under TCA § 39-802, then it would follow that Count VII should likewise be dismissed.

At argument, counsel for defendant agreed that he had filed a "boiler plate" motion for a bill of particulars and indicated a desire to withdraw it and file a new motion. Such motion will be granted.

It is therefore ORDERED that the motion to dismiss Count II be and it is hereby granted and the motion to dismiss the other counts be and it is hereby denied.

It is further ORDERED that defendant be allowed to withdraw his motion for a bill of particulars and to file a new motion within ten days.

ENTER this 5 day of October, 1976.

/s/ Bailey Brown
Chief Judge

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* Although it is not specifically charged in Count I that the bribe was sought to prevent extradition, at argument the Government conceded that here, as in Count II, this is its contention. This question should be covered by a bill of particulars.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

CRIMINAL CR 76-104

UNITED STATES OF AMERICA

v.

EDGAR H. GILLOCK

MEMORANDUM DECISION

[Filed Nov. 9, 1976]

Following our memorandum decision of October 5, 1976, dismissing Count II, this case has been before the court for further argument on the motions to dismiss the indictment. The government has, prior to this second argument, filed a response to the motion for a bill of particulars setting out its theories.

In the aforesaid memorandum decision, this court expressed doubt as to whether the Hobbs Act could properly be the basis of Count I and Counts III through VI in this indictment because of the language in the *Yokely* case, —— F.2d —— (6th Cir., decided September 13, 1976), to the effect that the Act applies only to "racketeering" situations. There, although the court was dealing with the applicability of the Act to an armed robbery of a K-Mart store, it used, as indicated, rather broad language in holding that the Act did not apply to such an armed robbery. Upon reflection, we have concluded that the court could not have meant to hold that the Act could only be applied to "racketeering" activity as such is usually thought of. Otherwise, the Act could not be applied, for example, in cases such as that of policemen taking "protection" money from persons operating illegal businesses as it was applied as recently as *United States* v. *Faulkner, et al.*, —— F.2d —— (6th Cir., decided July 9, 1976).

Defendant again earnestly contends that the Hobbs Act cannot be applied here because bribery, as distinguished from extortion, is alleged. The Act defines extortion to include ". . . the obtaining of property from another, with his consent . . . under color of official right." The government contends that, though bribery is alleged, this *is* an obtaining of property from victims, with their consent, under color of official right, within the meaning of the Act.

In *United States* v. *Braasch*, 505 F.2d 139 (6th Cir. 1974), in an opinion by Associate Justice Tom Clark, it is stated (at 151):

> "Appellants, however, overlook the fact that the evidence shows that the conspirators used the power and authority vested in them by reason of their office to obtain money not due them or due the office. The use of office to obtain payments is the crux of the statutory requirement of 'under color of official right', and appellants' wrongful use of official power was obviously the basis of this extortion. See United States v. Staszcuk, 502 F.2d 875 (7th Cir. 1974). It matters not whether the public official induces payments to perform his duties or not to perform his duties, or even, as here, to perform or not to perform acts unrelated to his duties which can only be undertaken because of his official position. So long as the motivation for the payment focuses on the recipient's office, the conduct falls within the ambit of 18 U.S.C. § 1951. That such conduct may also constitute 'classic bribery' is not a relevant consideration."

The above quotation contains the following footnote reference (at 151):

> "As appellants themselves point out, 'the modern trend of the federal courts is to hold that bribery and extortion as used in the Hobbs Acts are not mutually exclusive. United States v. Kahn, 472 F.2d 272, 278 (2d Cir. 1973), cert. den., 411 U.S. 982, 93 S.Ct. 2270 [36 L.Ed. 2d 958]."

See also: Stern, "Prosecution of Local Political Corruption Under the Hobbs Act: The Unnecessary Distinction Between Bribery and Extortion," 3 Seton Hall Law Review 1 (1971).

We therefore again conclude that the kind of bribery alleged in this indictment may be covered by the Hobbs Act.

Defendant also moves to dismiss on the ground that his conduct is privileged under the speech and debate clause of the Tennessee Constitution. The only case that seems squarely to deal with this problem is *United States* v. *Craig*, 528 F.2d 773 (7th Cir. 1976). In the initial opinions by a three-judge panel, the court held that neither the federal nor the state (Illinois) Constitutions, by their speech and debate clauses, created any immunity or any evidentiary privilege for state legislators prosecuted for official corruption under a federal criminal statute. A majority of the panel held, however, that under Rule 501 of the Federal Rules of Evidence there is a federal common law speech and debate evidentiary privilege, and held that, but for the fact that the privilege had been effectively waived, the defendant therein would have been entitled to have suppressed his statements to investigators and his grand jury testimony. The third member of the panel, concurring in the result, concluded that there was no federal common law evidentiary privilege and therefore did not reach the question of waiver. After an *en banc* hearing, a majority of the court (537 F.2d 957), agreed with the concurring opinion, holding that there is no federal common law evidentiary privilege.

It appears that none of the judges in *Craig* were of the opinion that, in this context, there is an immunity from prosecution created by the speech and debate clauses of the federal or state Constitutions or that there is such an immunity under the federal common law. Thus, even under the minority view in *Craig*, holding that there is an evidentiary privilege, defendant would not be entitled to have the indictment dismissed. Moreover, as was also pointed out in the first *Craig* opinion (528 F.2d at 783), even if the defendant had an immunity from prosecution under the speech and debate clause

for allegedly corruptly introducing a bill, he still could be prosecuted for agreeing to take a bribe to induce him to introduce the bill in the legislature, citing *United States* v. *Brewster*, 408 U.S. 501 at 526.

Defendant particularly relies on *Tenney* v. *Brandhove*, 341 U.S. 367, which is discussed and distinguished in the *Craig* case. We believe that it is enough, in distinguishing *Tenney*, to quote the last sentence in Justice Frankfurter's majority opinion (at 379):

> "We conclude only that here the individual defendants and the legislative committee were acting in a field where legislators traditionally have power to act, and that the statute of 1871 [creating civil liability for violation of certain federal civil rights] does not create civil liability for such conduct."

We therefore conclude that defendant is not entitled to have the indictment dismissed because of his speech and debate immunity or privilege.

The other motions in this case filed by the defendant, upon which argument has been had, can be disposed of briefly.

Defendant moves to dismiss the indictment on the ground that he has been denied due process because of indictment delay, that is, contends that such delay was brought about by the prosecution to gain an advantage. In support of the motion, which appears to be limited to Counts III through VI of the indictment, all of which involves alleged incidents in 1972, defendant showed newspaper stories at about that time reflecting, his counsel contended, rumors that there may have been bribes involved in the legislation referred to in those counts. Defendant also contends that information with respect to these alleged crimes was in the hands of another state senator and the then governor of the state in 1972. However, there is no indication whatsoever that the local U. S. Attorney's office had any inculpatory information; on the contrary, the Assistant United States Attorney handling this case stated in open court that the first information his office had of this alleged bribery conduct was a complaint received during the summer of

this year from a political opponent of the defendant. In any event, there has been no showing as of now that the local U.S. Attornye's [sic] office has delayed this prosecution to gain advantage.

Defendant has made a *Brady* motion, seeking all evidence favorable to his cause, which motion will not be granted on the ground that our Court of Appeals has held that such is not proper as part of discovery. The government must recognize, however, that if there is such information, it must be made available to the defendant at such a time that the defendant can take full advantage of it.

Defendant moves for the production of grand jury testimony on the ground that, among others, he may be able to show that the indictment is so unsupported by valid grand jury testimony that it should be dismissed. It is the opinion of the court that the grand jury testimony is not producible on this or any other ground, but again the government must recognize that such testimony may be producible to the defendant, once witnesses who have testified before the grand jury give their testimony at trial, as Jencks Act material.

The defendant has moved to suppress or to produce all evidence with respect to telephonic or other wire communications. Counsel for the government stated at argument that it has no wiretap evidence and that all tapes it has resulted from consent of one of the parties to the conversation. The government has agreed to make all such evidence available to counsel for the defendant.

The defendant has again moved for a bill of particulars, after withdrawing the motion to such effect initially filed. In view of the response of the government to such motion, setting out in considerable detail the government's theory with respect to these counts, the court is of the opinion that the motion for a bill of particulars should be denied.

The defendant has also made a general motion to produce for inspection various items of evidence, and counsel for the government indicated at argument that the government is ready to make available to defense counsel all materials the government has which are normally required to be produced in this court. Accordingly, the order entered pursuant to this memorandum should reflect the government's obligation to make such production.

Lastly, the defendant moved for a continuance of this case from its setting in early December. The ground for the motion is defense counsel's other trial obligations. The court takes note of the fact that the defendant, as a state senator, will be involved with the Legislature from early January until the session of the Legislature terminates around April. This would mean that, if the case is continued, it could not be tried until around May. This would also mean that the defendant, who has been charged with serious crimes with respect to his conduct of his office as a legislator, would be serving during such session of the Legislature without having had these charges resolved. It appears to the court that this is and would be a highly undesirable situation from the point of view of the public interest, and therefore this case should be tried and disposed of when it is presently set. Accordingly, the motion to continue the case will be denied.

Government counsel is instructed to prepare and submit an order reflecting the rulings made by the court.

ENTER this 9 day of November, 1976.

/s/ Bailey Brown
Chief Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

CR-76-104

UNITED STATES OF AMERICA, PLAINTIFF

vs.

EDGAR H. GILLOCK, DEFENDANT

SUPPLEMENT TO OFFER OF PROOF

[Filed Sept. 19, 1977]

On September 1, 1977, the United States filed an Offer of Proof in this case setting forth fourteen numbered items containing specific categories of evidence or testimony to be tendered at trial. The following is a supplement to item number 11(a), which should be inserted as the second paragraph immediately preceeding the paranthetical paragraph contained in item 11(a):

> Prior to introducing Senate Bill Number 1783, the Defendant induced and caused members of the Tennessee House of Repreesntatives to sponsor and introduce a similar bill in the House.

Respectfully submitted,

W. J. MICHAEL CODY
United States Attorney

BY: /s/ Glen Reid, Jr.
GLEN REID, JR.
Special Assistant

CERTIFICATE OF SERVICE

This is to certify that I have, this 19th day of Sept., 1977, served a copy of the foregoing instrument on Hal Gerber, Esq., 100 N. Main Bldg., #3121, Memphis, Tennessee, 38103; and James Neal, Esq., Third National Bank Building, Nashville, Tennessee, 37219, Attorneys for Defendant, by U.S. Mail, postage prepaid.

/s/ Glen Reid, Jr.

SUPREME COURT OF THE UNITED STATES

No. 78-1455

UNITED STATES, PETITIONER

v.

EDGAR H. GILLOCK

ORDER ALLOWING CERTIORARI. Filed May 14, 1979

The petition herein for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit is granted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1979 295082 5